

FREDERICK L. SMITH ET AL.

IBLA 74-193

Decided March 14, 1975

Appeal from decision of Montana State Office, Bureau of Land Management, dismissing appellants' protest against granting of priority to other parties' noncompetitive oil and gas lease offers on acquired lands in which the United States owns a fractional present interest. M-26267(SD), M-26269(SD), M-26271(SD), M-26371(SD), M-26458(SD).

Reversed and remanded.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Future and Fractional Interest Leases

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

2. Contests and Protests: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: First Qualified Applicant--Oil and Gas Leases: Future and Fractional Interest Leases

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer

obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

APPEARANCES: Frederick L. Smith, Ben E. Carnes, George R. White, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Frederick L. Smith, Ben E. Carnes and George R. White, as applicants for transfer of the offers of Vern K. Jones, 1/ have appealed from a decision by the Montana State Office, Bureau of Land Management, dismissing Jones' protest against the granting of priority to senior oil and gas lease offers. The protest is with respect to six noncompetitive oil and gas lease offers on acquired lands in which the United States owns a fractional (50%) present mineral interest and operating rights thereto. The appeal 2/ concerns protests against senior offers M-26267(SD), M-26269(SD), M-26271(SD), M-26371(SD), all filed by Maxine C. Amick, and M-26458(SD), filed by Stanley M. Edwards. 3/ On November 5, 1973, Amick filed her noncompetitive offers, and on November 7, 1973, Edwards submitted his.

Appellants' offers M-26827(SD), M-26828(SD), M-26829(SD), and M-26831(SD), are in conflict to certain extents with the senior offers. The senior offers contain no statements as to offeror's

1/ See 43 CFR 4.410 and 3106.3-4.

2/ As originally filed, the protest also objected to offers M-26456(SD) and M-26457(SD), but appellants did not appeal as to those offers.

With their notice of appeal, appellants for the first time protested the validity of Amick's offer M-26265(SD). That protest is remanded to the State Office for further action, since the State Office has issued no decision as yet upon appellants' protest against this offer.

3/ The senior offers are not owned by Amick but by M. W. Marrs and Stanley M. Edwards, holding on an equal basis. Service of appellants' notice and statement was made on Marrs personally, who acted for Edwards.

ownership of operating rights to the fractional mineral interests not owned by the United States, nor were such statements filed by December 10, 1973, when Jones tendered his noncompetitive junior offers. At that time, Jones protested the validity of the senior offers, alleging in effect a noncompliance with 43 CFR 3130.4-4. The State Office dismissed the protest, and this appeal ensued. The record indicates the issuance of no leases as yet upon lands material to this appeal.

Section 3130.4-4 requires in its first sentence that:

An offer for a fractional mineral interest noncompetitive lease * * * must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease.

In its adjudication, the State Office relied upon the implication it drew from the second sentence of section 3130.4-4, which states that:

Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

The State Office concluded:

[W]here the United States owns such a 50%, a lease will issue irrespective of who owns and controls the other 50% of the operating rights.

Only where the offeror will control less than 50% of operating rights does a statement by him become necessary.

As precedent, the State Office cited Pubco Petroleum Corporation, Montana 066789 (North Dakota), February 16, 1965.

[1] The State Office reasons that the only purpose for a statement of ownership of operating rights in the fraction not owned by the United States is to provide information as to the required fifty percent ownership. Such a construction, however, is not supported by the language of section 3130.4-4, nor by

Department precedent. Michigan Wisconsin Pipe Line Company, 17 IBLA 282 (1974); cf. Judith Walker, 18 IBLA 410 (1975). In Michigan Wisconsin Pipe Line, the Colorado State Office had rejected the appellant's acquired lands noncompetitive oil and gas lease offer where the United States owned a fifty percent mineral interest in the land and appellant failed to tender a statement as to its operating rights ownership in the remaining fraction until after the proper filing of conflicting offers. This Board held that under section 3130.4-4, such statement is mandatory, and when it is lacking, the offer gains no priority until the statement is filed. Accord, James H. Scott, 18 IBLA 55 (1974), where there were no intervening offers and the appellant's offer thus earned priority over others as of filing of the amendatory statement. Cf. Arthur E. Meinhart, 11 IBLA 139 (1973).

The State Office holding in Pubco is not consonant with Michigan Wisconsin Pipe Line. In the latter case the Board stated:

[I]t is crystal clear that the regulatory provision is free from ambiguity, contrary to appellant's assertion.

Moreover, the Special Instructions on the reverse of the lease offer form, under Item 2, contain this language:

In instances where the United States does not own a 100-percent interest in the oil and gas deposits in any particular tract, the offeror should indicate the percentage of Government ownership. In such cases the offeror must also furnish the information required by 43 CFR 3212.3 [now 3130.4-4].

* * * * *

The Secretary is without authority to disregard the plain and unambiguous provisions of his own mandatory regulations where the rights of third parties have intervened. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Chapman v. Sheridan-Wyoming Coal Company, 338 U.S. 621 (1950).

Section 3130.4-4 requires that if an offeror makes a noncompetitive lease offer on acquired lands in which the United States owns a fractional present interest, then that offeror must submit a statement detailing the extent of his ownership in the operating

rights not owned by the United States, regardless of the existence of ownership by the United States of fifty percent or more of the total operating rights. Since the record shows that the senior offerors did not tender such statements, the State Office was in error dismissing the junior offerors' protest.

[2] If appellants' transfers and their junior offers are otherwise proper, they obtain priority over conflicting senior offers which do not comply with section 3130.4-4. Michigan Wisconsin Pipe Line Company, supra; Meinhart v. Anderson, 6 IBLA 39, 42 (1972); F. W. C. Boesche, A-27997 (August 5, 1959), Boesche v. Udall, 373 U.S. 472 (1963). Appellants' protest must prevail.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and is remanded to the State Office for further action.

Joseph W. Goss
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

